

Sentence Review Division  
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SENTENCE REVIEW DIVISION  
OF THE SUPREME COURT  
STATE OF MONTANA

AUG 14 2020

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,

Plaintiff,

-vs-

EARL JAY ALTES,

Defendant.

) Cause No. DC-19-123

)

) Yellowstone County District Court

) Montana Thirteenth Judicial District

)

) **DECISION**

)

)

)

On January 23, 2020, the Defendant was sentenced as follows: Count I: A commitment to the Department of Corrections for a term of twenty four (24) months, with a recommendation for placement at WATCH, for the offense of Driving Under the Influence of a Dangerous Drug, a Felony, in violation of §61-8-401 MCA. The Court ordered an additional *consecutive* three (3) year commitment to the Department of Corrections, all suspended, and a fine of \$5,000.00 to be credited to the General Fund.

Count III: A commitment to the Department of Corrections for a term of three (3) years, all suspended, and a fine of \$1,500 to the Billings Police Department Drug Forfeiture Fund, for the offense of Criminal Possession of Dangerous Drugs, a Felony, in violation of §45-9-102, MCA.

Count IV: A commitment to the Department of Corrections for a term of five (5) years, with three (3) years suspended, for the offense of Partner of Family Member Assault, a Felony, in violation of §45-5-206(1)(a), MCA.

Count VI: A commitment to the Department of Corrections for a term of three (3) years, all suspended, for the offense of Tampering with Witnesses and Informants, a Felony, in violation of §45-7-206, MCA.

Counts I, II, and IV were ordered to run *concurrently* with each other. Count VI was ordered to run *consecutively* to Counts I, III, and IV. The Court dismissed Counts II, V, and VII – XV. The Defendant was given credit for time spent in pre-trial incarceration from January 24, 2019 through February 6, 2019 and May 10, 2019. The Defendant was given credit for time

served towards the fine in the amount of \$95 for each day served from January 24, 2019 through February 6, 2019 and May 10, 2019.

On August 7, 2020, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant appeared by video from the Missoula Assessment and Sanction Center, and was represented by Dan Biddulph, Defense Counsel, who appeared by video from Missoula, Montana. The State was not represented. The Defendant gave a statement.

Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it. The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that he understood this and stated that he wished to proceed.

Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

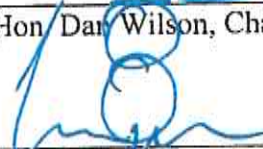
The Division finds that the reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive. Therefore, it is the unanimous decision of the Division that the sentence is **AFFIRMED**.

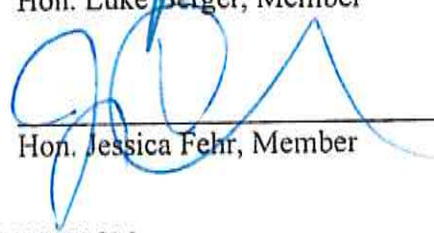
Done in open Court this 7<sup>th</sup> day of August, 2020.

DATED this 14<sup>th</sup> day of August, 2020.

SENTENCE REVIEW DIVISION

  
\_\_\_\_\_  
Hon. Dan Wilson, Chairperson

  
\_\_\_\_\_  
Hon. Luke Berger, Member

  
\_\_\_\_\_  
Hon. Jessica Fehr, Member

Copies mailed or emailed this 14<sup>th</sup> day of August, 2020, to:

Clerk of District Court – *via email*

Earl Jay Altes #3005838, Defendant

Hon. Rod Souza – *via email*

Dan Biddulph, Defense Counsel– *via email*

State Office of the Public Defender – *via email*

Julie Mees, Esq. – *via email*

  
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Shelly Smith, Office Administrator  
Sentence Review Division